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right to recover damages for breach of warranty: *Coal Co. v. Bradley*, 27 Pac. 454; *Weed v. Dyer*, 53 Ark. 155; BENJAMIN, SALES (Seventh Am. Edition), p. 961. Nor does it seem that the keeping and using of the goods with knowledge that they do not conform to the warranty, should operate as a waiver. *Lanson v. Aultman, etc., Co.*, 86 Wis. 281; *Taylor, etc., Co. v. Pumphrey* (Texas), 32 S. W. 225; *Breen v. Moran* (Minn.), 53 N. W. 755; *Best v. Flint*, 58 Vt. 543; *Dayton v. Hoaglund*, 39 Oh. St. 671; BENJAMIN, SALES (Seventh American Edition), p. 960. It would seem that the vendee has a right to rely upon the warranty given by the vendor and can accept the goods, in reliance upon the warranty, without examination, and if he discovers that the goods do not conform to the warranty he is under no duty to return them but can keep them and sue for the damages or set up counter claim for damage resulting from the breach.

SPECIFIC PERFORMANCE—CONTRACTS TO DEVISE—ANTENUPTIAL CONTRACT—ENFORCEMENT.—Action for specific performance of an alleged contract between plaintiff and his father, the testator. The controversy arises not from a defect in the will, but from an antenuptial contract whereby testator stipulated as follows: "and the said Jas. Phalen and C. S. his wife do farther respectively covenant and agree that they will make no distinction between their children as regards the proportion of their estates coming to each, etc." The theory of the present case is that testator left the plaintiff's equal share, not absolutely to him, but changed it by Codicil 7, whereby testator directed that the portion of his residuary estate bequeathed to his son the plaintiff should be held in trust and upon his death go to his heirs. In the opinion delivered by WERNER, J., (three judges concurring and three dissenting) it was *held*, (1) That a court of equity will in the exercise of sound discretion consider whether, under the circumstances, it will be equitable and just to compel the trustee, holding the property in trust to turn it over to the son. (2) That the antenuptial contract which was made because of the son's coming marriage was supported by sufficient consideration to uphold specific performance. *Phalen v. United States Trust Co. of New York et al* (1906), — N. Y. —, 78 N. E. Rep. 943.

The holding is sustained by the weight of authority, as to the right of the court to grant specific performance, in *King v. Hamilton*, 29 U. S. (4 Pet.) 311; *McCabe v. Crosier*, 69 Ill. 501; *Peris v. Haley*, 61 Mo. 453; *Murdfeldt v. N. Y., W. S. & B. Ry.*, 404. (2) That marriage is a good consideration, see *Chichester v. Cobb*, (Eng.) 14 L. T. N. S. 433; *Thompson v. Thompson*, 17 Ohio St. 649; *Barr v. Hill*, Add. (Pa.) 276; *Caines v. Jones*, 5 Yerg. (Tenn.) 249; *Eppes v. Randolph*, 2 Call (Va.) 125; *Wall v. Scales*, 1 Dev. Eq. N. C. 476; *Keays v. Gilmore*, Irish R. 8 Eq. 296, and SCHOULER, DOM. REL. § 178, holding that "the promise of a third party may be for the wife's benefit; or it may be for the mutual benefit of the married parties, and enforceable accordingly."

STREET RAILWAYS—LIABILITY FOR COST OF PAVING SPACE BETWEEN RAILS.—Plaintiff city after taking the proper preliminary steps was engaged in paving a street. Notice to pave its portion of the street was given the defend-